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JUN 17 2004

In re Application of : **OFFICE OF PETITIONS**
Wittwer et al. :
Application No. 10/626,169 : DECISION ON
Filed: 17 February, 2004 : PETITION
Atty Docket No. BM-134 :
:

This is a decision in reference to the petition filed on 17 February, 2004, which is treated as a petition under 37 CFR 1.53(e) requesting that the above identified application be accorded a filing date of 23 July, 2003.

The petition is dismissed.

Petitioner asserts that three (3) applications, assigned attorney docket Numbers PR-47, KN-62, and BM-134, respectively, were filed in the same Express Mail envelope on 23 July, 2003. The filing fee, state petitioners, was submitted for two of the applications, PR-47 and KN-62. Petitioners have included copies of these checks with the present petition. Petitioners assert that a return receipt postcard was only received for one of the applications, however, Attorney Docket No. PR-47, was assigned Application No. 10/626,328. Petitioners assert that no filing receipt or return receipt postcard was received for the other two applications.

The application papers petitioners assigned Attorney Docket Number KN-62 have now been located in the Office, and have been assigned Application Number 10/626,167. A Filing Receipt will be mailed to applicants in due course.

However, after a search of Office PALM records, the application assigned Attorney Docket Number BM-134, For: LOCKING SYSTEM FOR MOTOR VEHICLES, cannot be located in the Office.

Petitioners' evidence that the application assigned Attorney Docket Number BM-134 was filed in the USPTO on 23 July, 2003, has been considered, but is not persuasive. No specification or drawings for this application were filed on 23 July, 2003, since no such pages and drawing figures are present among the

application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioner believes the application was among the papers he filed on 23 July, 2003, is not more persuasive than the actual papers shown to have been received by the official file.

Furthermore, neither petitioners' Express Mail customer receipt nor the Express Mail log book are persuasive evidence that the above-identified application was filed on 23 July, 2003, because two of the three applications asserted to have been filed in that Express Mail envelope were in fact received and assigned application numbers. Where there is a dispute as to the contents of correspondence submitted to the Office, an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what documents and or fees were filed in the Office.¹ A petition under 37 CFR 1.10(e) is only appropriate where the correspondence was sent by Express Mail but nothing was received by the Office. Rather, the Express Mail log and application transmittal sheet evidences, at best, petitioners' intent to file the above-identified application on 23 July, 2003. Petitioners simply have no persuasive evidence that the specification, including at least one claim, and drawings assigned Attorney Docket No. BM-134 were among the application papers received in the USPTO on 23 July, 2003.

The application will be processed with a filing date of 17 February, 2004, using the specification, including the claims, and 11 sheets of drawings filed on that date.

Since this petition was not due to an error on the part of the USPTO, the petition fee will not be refunded.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

¹MPEP 513

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 17 February, 2004, using the application papers filed on that date.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions